

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHARLES SMITH, JR.

PLAINTIFF

V.

CIVIL ACTION NO. 3:22-CV-588-KHJ-MTP

K-9 OFFICER HEATH DERRICK KEYHEA

DEFENDANT

ORDER

Before the Court is the [21] Report and Recommendation (“Report”) of United States Magistrate Judge Michael T. Parker. The Report recommends granting Defendant Heath Derrick Keyhea’s [17] Motion to Revoke Plaintiff Charles Smith, Jr.’s *in Forma Pauperis* Status. [21] at 4. The Report also recommends dismissing the action without prejudice. *Id.* Written objections to the Report were due by October 10, 2023. *See id.* The Report notified the parties that failure to timely file written objections would “bar an aggrieved party, except on the grounds of plain error, from attacking on appeal unobjected to proposed factual findings and legal conclusions accepted by the District Court.” *Id.* (citation omitted).

When no party objects to a Magistrate Judge’s report, the Court need not review it de novo. *See* 28 U.S.C. § 636(b)(1). Instead, the Court can apply the clearly erroneous, abuse-of-discretion, and contrary-to-law standards of review. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

On October 7, 2022, Smith filed his [1] Complaint and [2] Motion for Leave to Proceed *in Forma Pauperis*. In January 2023, the Magistrate Judge granted Smith’s [2] Motion for Leave to Proceed *in Forma Pauperis* and entered an order setting a

payment schedule. *See* Order [6]. But on July 3, 2023, Keyhea moved to revoke Smith's pauper status. [17]. Smith did not respond to the motion. The Magistrate Judge reviewed Keyhea's [17] Motion and found it well taken. *See* [21] at 4 (recommending Keyhea's [17] Motion to Revoke Smith's *in Forma Pauperis* Status be granted). Specifically, the Magistrate Judge found that Smith's privilege to proceed *in forma pauperis* must be revoked because (1) Smith had, "on three prior occasions during detention, had an action or appeal dismissed as frivolous, malicious, or for failing to state a claim"; and (2) Smith did not satisfy the imminent-danger exception to the three-strikes rule. *Id.* at 1–3. (citing 28 U.S.C. § 1915(g)).

Accordingly, the Magistrate Judge's [21] Report recommends granting Keyhea's [17] Motion to Revoke Smith's *in Forma Pauperis* Status. [21] at 4. The Report also recommends dismissing the case without prejudice. *Id.* Smith did not object to the Report, and the time to do so has passed. The Court finds that the Report is not clearly erroneous or contrary to law. So, the Court adopts the [21] Report and Recommendation of United States Magistrate Judge Michael T. Parker as the findings of this Court.

Therefore, the Court GRANTS Keyhea's [17] Motion to Revoke Smith's *in Forma Pauperis* Status and DISMISSES the case without prejudice. Further, the Court directs the Clerk of Court to reopen this civil action if the \$402 filing and administrative fees are paid within 30 days from the entry of this Order.

SO ORDERED, this 19th day of October, 2023.

s/ *Kristi H. Johnson*
UNITED STATES DISTRICT JUDGE